

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

SHAWN MURPHY,

Plaintiff,

v.

Case No. 21-cv-52-pp

WISCONSIN DEPARTMENT
OF CORRECTIONS, *et al.*,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION TO PARTIALLY WAIVE INITIAL
PARTIAL FILING FEE (DKT. NO. 14)**

On February 2, 2021, the court granted plaintiff Shawn Murphy's motion to use his release account to pay the initial partial filing fee of \$1.71. Dkt. No. 11. On February 22, 2021, the court extended his time to pay that fee to March 26, 2021. Dkt. No. 13.

The plaintiff now moves to pay only a portion of the \$1.71 initial partial filing fee and waive the remainder. Dkt. No. 14. The plaintiff says, as he has before, that he has only \$0.94 in his release account and has no money in his regular account. *Id.* at 1. He asks to pay the \$0.94 now and to pay the remaining \$0.77 over time (in addition to the remaining \$348.29 of the \$350 filing fee). *Id.* at 2. The plaintiff says \$0.94 "is all I have or will have" because he expects to be released from prison on August 3, 2021. *Id.*

The court has the authority to waive a plaintiff's initial partial filing fee under 28 U.S.C. §1915(b)(4) if he lacks both the "assets" and the "means" to pay it. The Court of Appeals for the Seventh Circuit has explained that "[i]t is not enough that the prisoner lack assets on the date he files." Newlin v. Helman, 123 F.3d 429, 435 (7th Cir. 1997), overruled in part on other grounds

by Walker v. O'Brien, 216 F.3d 626, 628–29 (7th Cir. 2000), and Lee v. Clinton, 209 F.3d 1025, 1027 (7th Cir. 2000). If that were the case, a prisoner could easily avoid paying the initial partial filing fee by spending what is in his trust account before filing his lawsuit. Therefore, a prisoner’s “means” is construed broadly. A prisoner may lack “assets” but still have “means” to pay the fee.

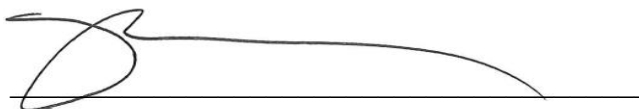
As the court explained in its previous orders, the plaintiff’s trust account statement confirms that he has only \$0.94 in his release account and no money in his regular account. See Dkt. No. 11 at 1–2. Although he has received occasional, small deposits into his regular account, that money was taken the same day to pay filing fees due in other federal and state cases. Given that the plaintiff has neither the assets nor the means to pay the full initial partial filing fee, the court will not require him to pay the entire amount.

The court **GRANTS** the plaintiff’s motion to pay only \$0.94 of the initial partial filing fee and to waive the remainder. As the court indicated in its February 22, 2021 order, the plaintiff must pay the \$0.94 partial initial partial filing fee **by the end of the day on March 26, 2021**. Dkt. No. 13 at 3. If the court does not receive the partial initial partial filing fee by the end of the day on March 26, 2021, the court will dismiss the case for the plaintiff’s failure to pay the fee.

The court will send a copy of this order to the Warden at Waupun Correctional Institution.

Dated in Milwaukee, Wisconsin this 1st day of March, 2021.

BY THE COURT:


HON. PAMELA PEPPER
Chief United States District Judge